

ESTTA Tracking number: **ESTTA200384**

Filing date: **03/24/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Moby's Auto Spa, Inc.
Granted to Date of previous extension	03/26/2008
Address	Suite 200 One Monument Square Portland, ME 04101 UNITED STATES
Correspondence information	James F. Keenan, Jr. Attorney for Opposer Bernstein, Shur, Sawyer & Nelson 100 Middle Street Portland, ME 04104 UNITED STATES jkeenan@bssn.com Phone:(207) 774-1200

Applicant Information

Application No	77205602	Publication date	11/27/2007
Opposition Filing Date	03/24/2008	Opposition Period Ends	03/26/2008
Applicant	Whale Wash, LLC 10511 Ilona Avenue Los Angeles, CA 90064 UNITED STATES		

Goods/Services Affected by Opposition

Class 037. All goods and services in the class are opposed, namely: Car washing
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3099118	Application Date	06/21/2004
Registration Date	05/30/2006	Foreign Priority Date	NONE
Word Mark	MOBY'S AUTO SPA ONE WHALE OF A WASH!		
Design Mark			
Description of	The mark consists of The word "MOBY'S" above the words "AUTO" and "SPA"		

Mark	with a cartoon style drawing of a whale with a car coming out of its mouth being between the words "AUTO" and "SPA", all of this being above the phrase "ONE WHALE OF A WASH".
Goods/Services	Class 037. First use: First Use: 2005/12/31 First Use In Commerce: 2005/12/31 Automobile washing, detailing and polishing services

U.S. Registration No.	3024749	Application Date	06/16/2004
Registration Date	12/06/2005	Foreign Priority Date	NONE
Word Mark	ONE WHALE OF A WASH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 2005/09/30 First Use In Commerce: 2005/09/30 Automobile washing, detailing and polishing services		

Attachments	78438283#TMSN.jpeg (1 page)(bytes) 78436261#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (2 pages)(16169 bytes) Exhibit A.pdf (2 pages)(70249 bytes) Exhibit B1.pdf (2 pages)(72017 bytes) Exhibit B2.pdf (2 pages)(83484 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/James F. Keenan, Jr./
Name	James F. Keenan, Jr.
Date	03/24/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Moby's Auto Spa, Inc.,	)	Mark:	WHALE WASH
)		
Opposer,	)	Serial No.:	77/205,602
)		
v.	)	Filed:	June 13, 2007
)		
Whale Wash, LLC	)	Int'l Cl.:	37
)		
Applicant.	)	Published:	November 7, 2007

NOTICE OF OPPOSITION

In the matter of the above-identified application for the registration of a trademark, Opposer, Moby's Auto Spa, Inc., a corporation duly organized and existing under the laws of Kentucky, and having a place of business in Portland, Maine believes it would be damaged by the registration of the mark shown in Serial No. 77/205,602 in Class 37 and therefore opposes registration of said mark. The grounds for opposition are as follows:

1. The Applicant seeks to register WHALE WASH as a trademark for "car washing" in International Class 37. A copy of the details of the mark as filed is attached as Exhibit A.
2. Opposer has since at least as early as September 2005 used the mark ONE WHALE OF A WASH, MOBY'S AUTO SPA ONE WHALE OF A WASH and a Whale character in relation to its own car washing and detailing services.
3. Opposer is the owner of United States Trademark Registration Nos. 3,024,749 for ONE WHALE OF A WASH and 3,099,118 for the MOBY'S AUTO SPA ONE WHALE OF A WASH LOGO in International Class 37 for "automobile washing,

detailing and polishing services” (collectively, the “Whale Trademarks”). A copy of the details of these registrations is attached as Exhibit B.

4. The mark WHALE WASH sought to be registered by Applicant is substantially similar to Opposer’s previously used and registered Whale Trademarks, such that the use of the mark WHALE WASH is likely to cause confusion, to cause mistake, or to deceive purchasers and others as to the source or origin of Applicant’s services, thereby causing irreparable harm and damages to Opposer.

5. The services in connection with which Applicant seeks registration are likely to be marketed and sold through the same channels of trade and to the same class of purchasers as Opposer’s such that use and registration of the mark WHALE WASH in connection with these services is likely to cause confusion, to cause mistake, or to deceive purchasers and others as to the source or origin of these services, thereby irreparably damaging Opposer.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that application Serial No. 77/205,602 be refused.

Date: March 24, 2008

Respectfully submitted,

/s/James F. Keenan, Jr.
James F. Keenan, Jr.
Bernstein, Shur, Sawyer & Nelson
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Portland, Maine 04104-5029
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jkeenan@bernsteinshur.com
Attorney for Opposer



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Whale Wash

Word Mark	WHALE WASH
Goods and Services	IC 037. US 100 103 106. G & S: Car washing
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77205602
Filing Date	June 13, 2007
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	November 27, 2007
Owner	(APPLICANT) Whale Wash, LLC LTD LIAB CO NEVADA 10511 Ilona Avenue Los Angeles CALIFORNIA 90064
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WASH" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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ONE WHALE OF A WASH

Word Mark	ONE WHALE OF A WASH
Goods and Services	IC 037. US 100 103 106. G & S: Automobile washing, detailing and polishing services. FIRST USE: 20050930. FIRST USE IN COMMERCE: 20050930
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78436261
Filing Date	June 16, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	April 26, 2005
Registration Number	3024749
Registration Date	December 6, 2005
Owner	(REGISTRANT) Moby's Auto Spa, Inc. CORPORATION KENTUCKY c/o Jay S. Geller, Esq. Suite 200 One Monument Way Portland MAINE 04101
Attorney of Record	James F. Keenan, Jr.
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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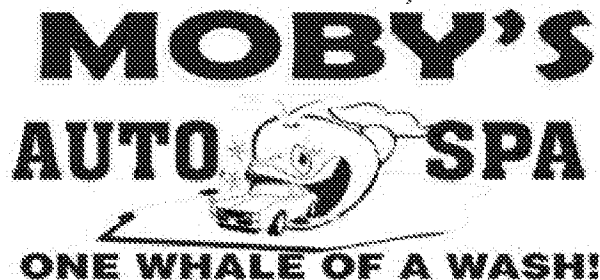
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Word Mark	MOBY'S AUTO SPA ONE WHALE OF A WASH!
Goods and Services	IC 037. US 100 103 106. G & S: Automobile washing, detailing and polishing services. FIRST USE: 20051231. FIRST USE IN COMMERCE: 20051231
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.01.09 - Stars, two; Two stars 01.01.13 - Stars - multiple stars with five points 01.15.25 - Coal; Dust; Light rays; Liquids, spilling; Pouring liquids; Sand; Spilling liquids 03.19.02 - Orcas; Whales 03.19.24 - Stylized fish, whales, seals, sea lions 18.05.01 - Cabs, taxi; Cars (not emergency); Hearses; Limousines; Race cars; Taxicabs 26.17.10 - Lines, zig-zag; Zig-zag line(s)
Serial Number	78438283
Filing Date	June 21, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	October 25, 2005
Registration Number	3099118
Registration	May 30, 2006

Date
Owner (REGISTRANT) Moby's Auto Spa, Inc. CORPORATION KENTUCKY c/o Jay S. Geller, Esq. Suite 200 One Monument Way Portland MAINE 04101
Attorney of Record James F. Keenan, Jr., Esq.
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AUTO SPA" APART FROM THE MARK AS SHOWN
Description of Mark The mark consists of The word "MOBY'S" above the words "AUTO" and "SPA" with a cartoon style drawing of a whale with a car coming out of its mouth being between the words "AUTO" and "SPA", all of this being above the phrase "ONE WHALE OF A WASH".
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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